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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,455	11/26/2001	Donald L. Mobley	8266-0740	7793

7590 05/29/2003

Timothy E. Niednagel
Bose McKinney & Evans LLP
135 N. Pennsylvania Street, Suite 2700
Indianapolis, IN 46204

EXAMINER

SY, MARIANO ONG

ART UNIT PAPER NUMBER

3683

DATE MAILED: 05/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/992,455	MOBLEY ET AL.	
	Examiner	Art Unit	
	Mariano Sy	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1--9, 11-15 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

1. Applicant's election of Specie A, figures 17-19, claims 1-9, 11-15, and 21-24 in Paper No. 17 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 10 and 16-20 are withdrawn from consideration.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "set screw" in line 9 of Claim 7; line 13 of Claim 12, and "a notch" in line 10 of Claim 7; line 14 of Claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. Claim 1 is objected to because of the following informalities: --with-- should be inserted after "relationship" in line 9.

Claim 15 objected to because of the following informalities: A period "." should be inserted after --machine-- in line 2.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6, 8-11, 13-15, 23, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the exterior surface" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the first external side wall" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "forming within the interior opening" in line 6. The word "forming" is a process of making a product.

Claim 15 recites the limitation "the welding step" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites the limitation "the cylindrical sleeves" in line 3. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure that is not enabling. In lines 9-10 recites "the plurality of casters each include a set screw to orient the caster and the caster mounting tubes are each formed to include a notch configured to receive one of the set screws." It is vague and unclear as to how this will work with respect to the figures shown.

7. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure that is not enabling. In lines 13-15 recites "the plurality of casters each include a set screw to orient the caster and the caster mounting tubes are each formed to include a notch configured to receive one of the set screws." It is vague and unclear as to how this will work with respect to the figures shown.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4, 8, 10, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall (U.S. Patent Number 5,330,064).

Re-claims 1-3 and 10 Hall discloses, as shown in fig. 1-2, all the structure of claimed apparatus including: base frame 28, patient support 33, caster rectangular sleeve 54, caster rectangular mounting tubes 44, and mounting tube being connected to base frame by welds disclosed in col. 4, line 57.

Re-claim 4 Hall discloses, as shown in fig. 1-2, wherein the first external side wall abutting the base frame by welding and rivets as disclosed in col. 4, line 57, since installing a rivet requires aligned holes in the side wall and base frame located between the welds.

Re-claim 8 Hall discloses, as shown in fig. 1-2, wherein the caster mounting tubes has a square cross-sectional shape.

Re-claims 21 and 22 Hall discloses, as shown in fig. 1-2, all the structures of claimed apparatus including: base frame 28, patient support 33, caster rectangular sleeve 54, caster rectangular mounting tubes 44, and mounting tube being connected to base frame by welding and rivets as disclosed in col. 4, line 57, since installing a rivet requires aligned holes in the side wall of the mounting tube and the side of bed frame located between the welds.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 5, 6, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Wisecarver (U.S. Patent Number 3,880,394).

Reclaims 5, 6, 23, and 24 Hall fails to disclose wherein the sleeve of each caster has a cylindrical shape and the plurality of caster mounting tubes each include interior partially cylindrical concave wall sections configured to receive one of the cylindrical sleeve, wherein each of the mounting tubes also includes a corner notch location between the concave wall sections.

Wisecarver teaches, as shown in fig. 1-3, the use of a square mounting tube 1 and a bushing 6 of cylindrical interior is fixed in the square mounting tube.

One skill in the art would have modify the square mounting tube with a square interior wall of Hall to an interior cylindrical wall to receive a cylindrical sleeve, in view of the teaching of Wisecarver, by using a cylindrical bushing fixed to the square interior wall of square tubing or using a square tubing with a thick wall by forming or cutting a cylindrical cross-section through the square interior wall to receive a cylindrical bushing, is a matter of design choice that have the same intended function of free rotation and large bearing areas between the mounting tube and the sleeve, depending upon cost and availability of material during manufacturing.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Alusick et al. (U.S. Patent Number 5,056,231).

Reclaim 7 Hall discloses, as shown in fig. 1-2, all the structure of claimed apparatus including: base frame 28, patient support 33, caster rectangular sleeve 54,

Art Unit: 3683

caster rectangular mounting tubes 44, and mounting tube being connected to base frame by welds disclosed in col. 4, line 57; wherein the plurality of casters each include a bolt to orient the caster and the caster mounting tubes are each formed to include a hole configured to receive one of the bolts.

However Hall fails to disclose the use of set screw into a notch to orient the caster and caster mounting tubes.

Alusick et al. teaches, as shown in fig. 2b and 3, the use of a set screw 8 into a notch 82 of a spindle 80.

One skill in the art would have modify the connections between the caster and caster mounting tube, with the use of a set screw engaging on a notch instead of using a bolt through holes, is a matter of design choice or an alternate equivalent connection that have the similar function of holding the caster in position and avoid from falling out of the caster mounting tube.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Seesengood (U.S. Patent Number 4,361,930).

Re-claim 9 Hall fails to disclose wherein the sleeve of the caster has a cylindrical shape. Seesengood teaches the use of a sleeve 11 of a caster that has a cylindrical shape 14.

It would have been obvious to one of ordinary skill in the art to have utilize a sleeve of a caster that has a cylindrical shape, in view of the teaching of Seesengood, since it is within the general skill in the art to make a change in the form or shape on the

Art Unit: 3683

basis of its suitability for intended use as a matter of obvious design choice. In re Dailey, 149 USPQ47 (CCPA 1976).

15. Claims 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Seesengood and in view of Maloney (U.S. Patent Number 5,549,072).

Re-claims 11, 13, and 14 Hall discloses, as shown in fig. 1-2, a method for attaching a caster 50 having a sleeve 54 to a base frame 28, the method comprising the steps of: providing a caster having a sleeve, a mounting tube 44 having four side walls with an interior opening having a substantially square cross-sectional shape, and a base frame having an outer surface; placing a first side wall of the mounting tube against the outer surface of the base frame; welding the mounting tube to the base frame disclosed in col. 4, line 57; and installing the sleeve of the caster into the interior opening of the mounting tube.

However Hall fails to disclose the sleeve of the caster is cylindrical sleeve and providing the rectangular interior opening of the mounting tube with a generally round cross-sectional shape to receive the cylindrical sleeve of the caster.

Sesengood teaches the use of a sleeve 11 of a caster that has a cylindrical shape 14. Maloney teaches, as shown in fig. 4, the use of a square tube 12 having an upper opening 16 with a bushing having a circular opening.

It would have been obvious to one of ordinary skill in the art to have utilize a sleeve of a caster that has a cylindrical shape, in view of the teaching of Seesengood, and to have

Art Unit: 3683

utilized a square tube 12 having an upper opening 16 with a bushing having a circular opening, in view of the teaching of Maloney, since it is within the general skill in the art to make a change in the form or shape on the basis of its suitability for intended use as a matter of obvious design choice. In re Dailey, 149 USPQ47 (CCPA 1976).

16. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Seesengood and Maloney as applied to claim 11 above, and further in view of Groth (U.S. Patent Number 3,936,657).

Re-claim 15 Hall as modified, was silent to disclose wherein a welding step includes providing a two axis welding machine.

Groth teaches the use of a two axis welding machine is well known, see col. 1, lines 5-6.

It would have been obvious to one of ordinary skill in the art to have merely utilized the known use of a two axis welding machine for welding the mounting tube to the base frame, in view of the teaching of Groth, in order to reduce cost of manufacturing and increase production.

17. Claim 12 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action.

Art Unit: 3683

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mariano Sy whose telephone number is 703-308-3427.

The examiner can normally be reached on Mon.-Fri. from 9:00 A.M. to 3:00 P.M.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder, can be reached on (703) 308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



M. Sy

May 23, 2003



JACK LAVINDER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600